

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Interim Suspension Order  
Against:**

**SEYMOUR MALLIS, M.D. Respondent**

**Physician's and Surgeon's Certificate No. A 23608**

**Agency Case No. 800-2020-067958**

**OAH No. 2020120229**

**DECISION AND ORDER GRANTING PETITION FOR INTERIM  
SUSPENSION ORDER**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on December 23, 2020, because of the ongoing COVID-19 pandemic.

Tessa Heunis, Deputy Attorney General, appeared on behalf of petitioner, William Prasifka, Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California.

Seymour Mallis, M.D., respondent, represented himself. Dr. Mallis, however, did not attend the entire hearing.

Oral and documentary evidence was received, the record was closed and the matter was submitted for decision on December 23, 2020.

## **PROTECTIVE ORDER**

The exhibits admitted into evidence contain confidential information that is protected from public disclosure. Because it is not practical to delete this information from these exhibits, and to protect privacy and confidential information from inappropriate disclosure, a written Protective Order Sealing Confidential Records is issued. This Protective Order governs the release of documents to the public. The parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to this order, provided that such documents are protected from release to the public.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The board issued Physician's Certificate Number A 23608 to Dr. Mallis on December 12, 1969. The certificate is renewed and current and will expire on March 22, 2022, unless renewed.
2. On December 7, 2020, petitioner filed a petition for an ex parte interim order of suspension. On December 9, 2020, pursuant to OAH's order of this date, that petition was granted, Dr. Mallis' ability to practice medicine was suspended and the noticed hearing on the petition was scheduled pursuant to Government Code section 11529.

3. In support of his petition, petitioner submitted the following documents which have been marked and admitted:

Exhibits 1 and 2: Petition and Memorandum of Points and Authorities

Exhibit 3: Certificate of Licensure

Exhibit 4: Declaration of Laura Chavez, Administrator at Encompass Family and Internal Medicine Group (Encompass)

Exhibit 5: Declaration of Amirhassan Bahreman, M.D. with attachments

Exhibit 6: Declaration of Steven Ornish, M.D. with attachments

Exhibit 7: Declaration of Brian Murray, M.D., F.A.C.P.

Exhibit 8: Declaration of Deputy Attorney General Tessa Heunis

4. At the noticed hearing, Dr. Mallis stated he did not understand why the matter was going forward because he no longer practices medicine, and he emphasized that he no longer practices medicine several times. He expressed frustration and anger that the matter was proceeding and said he had an "urgent" matter he needed to attend. He then ended his participation in the teleconference.

### **Initiation of Investigation**

5. On June 8, 2020, the board received an anonymous complaint that Dr. Mallis "is suffering from dementia" and "should not be seeing patients any longer." The complaint referenced incidents where Dr. Mallis forgot to come to work, forgot events, and forgot applicable prescribing guidelines for prescribing of opioids and

"subscribing [opioids] over the limits." The complaint requested an evaluation of Dr. Mallis's mental fitness.

In response to that anonymous complaint, petitioner began an investigation through the Department of Consumer Affairs' Health Quality Investigation Unit (HQIU).

### **Ms. Chavez's Declaration**

6. Ms. Chavez is the Administrator at Encompass, which leases office space to Dr. Mallis. She signed a declaration on December 3, 2020, under penalty of perjury attesting to the following facts: She has worked with Dr. Mallis for approximately six years; over the past several months she noticed that he is frequently confused and suffers from memory problems; she is concerned for the safety of his patients. Encompass was closed for several weeks because of the Covid-19 pandemic. Dr. Mallis resides in an assisted living facility and during the pandemic lockdown, she thinks he was largely shut-off from social interaction. Even before lockdown, she noticed Dr. Mallis was becoming forgetful and confused, and his condition worsened when the office reopened post lockdown. She believes his mental status is continually declining.

After the lockdown, Dr. Mallis's schedule was changed with his first day of work each week being Tuesday so the office could call him on Monday to remind him to come to work because he had failed to appear on Mondays. On occasion, he arrived at the practice confused, thinking he was at a service station to get his car serviced. Frequently, Ms. Chavez or other staff members needed to help Dr. Mallis "get to where he needed to be." Ms. Chavez has observed Dr. Mallis become confused regarding the office's billing procedures, although they have remained unchanged, and he has worked with the same biller for approximately 15 years. She described a recent issue with Dr. Mallis's own bank accounts where he forgot transactions he made. She noted

around June 2020 he brought Ms. Chavez the corporate checkbook for safekeeping. She does not have signing powers over the corporate account but now keeps the checks away from Dr. Mallis so that he does not inappropriately access the account.

In addition, Ms. Chavez noted that on July 7, 2020, Dr. Mallis met, along with her, with an investigator with the Department of Consumer Affairs Health Quality Investigation Unit (HQIU). Dr. Mallis signed releases so his medical records could be obtained, and agreed to undergo a voluntary mental examination. But, on October 13, 2020, Dr. Mallis appeared to not recall that meeting or having a complaint made about his memory. Based on her observations of Dr. Mallis and her interactions with him over six years, Ms. Chavez believes as a "layperson" Dr. Mallis is "no longer able to practice medicine safely due to ongoing issues of confusion and poor memory."

### **Neurological Examination of Dr. Mallis by Dr. Bahreman**

7. Around May 2020, Dr. Mallis's colleague asked that Dr. Bahreman conduct a neurological evaluation of Dr. Mallis. It is not clear from the record why his colleague felt that such an evaluation was needed at that time. Dr. Bahreman conducted this evaluation of Dr. Mallis on May 22, 2020. Dr. Bahreman is board-certified in general neurology and neuromuscular disorder and vascular neurology (stroke). He, however, did not make any positive diagnoses or form an opinion regarding Dr. Mallis's ability to safely practice medicine because he did not "regard [himself] suitably qualified to do so." He suggested only as his impression that Dr. Mallis, who he noted was 90 years old when he evaluated him, may have mild dementia and or mild cognitive impairment. Instead of a positive diagnosis, Dr. Bahreman recommended Dr. Mallis undergo a detailed neuropsychiatric testing evaluation to obtain a more accurate diagnosis and prognostication.

8. Despite the lack of a positive diagnosis, certain information Dr. Bahreman obtained suggested that Dr. Mallis suffers from a more than “mild” cognitive impairment and was considered, as discussed below, by Dr. Ornish who evaluated Dr. Mallis at the board’s request. Dr. Bahreman, in his evaluation, included a “BrainCheck” test report prepared by the testing company based on the “BrainCheck” test Dr. Mallis completed at Dr. Bahreman’s request. BrainCheck offers a rapid computerized neurocognitive testing that takes about 10 minutes and can be administered on a computer or at a doctor’s office.

According to the report prepared from the BrainCheck test of Dr. Mallis, Dr. Mallis scored in the 0th population percentile for immediate and delayed recognition and in “the 0th population percentile, **VERY LOW**” with the “Impression” being “**LIKELY** indication of dysfunction.” (Emphases in original.) Dr. Mallis’s combined test score was “100” out of a possible “200” with the “[p]resence of cognitive impairment” deemed “likely” with clinical correlation.

### **Forensic Psychiatric Evaluation of Dr. Mallis**

9. At the board’s request, Dr. Mallis was referred to Dr. Ornish to conduct a forensic psychiatric evaluation of Dr. Mallis. Dr. Ornish is double-board-certified in general and forensic psychiatry and a Diplomate of the American Board of Psychiatry and Neurology and a Diplomate in the Subspecialty of Forensic Psychiatry. He has a private practice specializing in adult, geriatric, and forensic psychiatry, psychotherapy and psychopharmacology.

10. Dr. Ornish performed the forensic psychiatric evaluation of Dr. Mallis on November 3, 2020, which was conducted through the Zoom digital video platform,

and he wrote a detailed 18-page report summarizing his evaluation, assessment and opinions regarding Dr. Mallis's ability to safely practice medicine.

11. As part of his evaluation Dr. Ornish reviewed information obtained by the HQUI investigator and interviewed Dr. Mallis, as noted, through the Zoom platform on November 3, 2020.

12. During the mental status examination component of his evaluation, Dr. Ornish found that Dr. Mallis "exhibited significant cognitive impairment", which Dr. Ornish described in detail in his report based on Dr. Mallis's answers to questions posed to him. Dr. Ornish recorded that Dr. Mallis gave incorrect and erroneous responses regarding his zip code where he has practiced medicine for 20 years, his area code, and his work schedule. He was unable to describe the basic structure of his medical practice, or his relationship with his professional colleague, the same colleague who asked that Dr. Bahreman evaluate Dr. Mallis. He also did not recall seeing Dr. Bahreman or why he might have been referred to a neurologist. Dr. Mallis was, additionally, unable to recall one of the medications he was taking. Further, he was unable to recall the number of children he has and the name of one of his grandchildren.

13. As further part of his psychiatric evaluation, Dr. Ornish administered the Montreal Cognitive Assessment (MOCA), a more sensitive test Dr. Ornish noted than the Mini-Mental Status Examination test that Dr. Bahreman administered. He found Dr. Mallis's scores on this assessment to be consistent with Alzheimer's disease. While Dr. Ornish noted that Dr. Mallis had some cognitive strengths, Dr. Mallis displayed "profound" short-term and long-term memory impairment. Dr. Mallis also exhibited deficits in construction, as shown by his inability to copy a cube, and deficits in

executive functioning as evidenced by his performance on the Alternating Trail Making test on the MOCA.

14. Also, Dr. Ornish expressed concern about Dr. Mallis's ability to safely prescribe opioids based on his response to questions about his prescribing of opioids to one of his patients. He suggested that Dr. Mallis lacks the "critical thinking" skill required to safely prescribe opioids.

15. Based on his evaluation of Dr. Mallis, Dr. Ornish diagnosed Dr. Mallis with major neurocognitive disorder due to Alzheimer's disease. Dr. Ornish opined that Dr. Mallis "has quite severe short and long-term memory impairment (i.e., dementia) from Alzheimer's disease and poses a present danger or threat to the public health, welfare and safety."

### **Dr. Murray's Declaration**

16. Dr. Murray was the Medical Consultant for the Enforcement Branch of the board, serving in that capacity from 1996 until 2014, when he was transferred to HQIU where he now serves as medical consultant. Dr. Murray is a licensed physician, board-certified in internal medicine. In his capacity as a medical consultant for HQIU, Dr. Murray reviewed the investigative file in this matter including Dr. Bahreman's and Dr. Ornish's reports and a Controlled Substances and Utilization Review and Evaluation report (CURES report) showing the controlled substances Dr. Mallis prescribed from December 24, 2019, and June 24, 2020.<sup>1</sup> Dr. Murray prepared a declaration that

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<sup>1</sup> In his declaration Dr. Murray wrote "June 24, 2019", which appears incorrect.



summarized his concerns about Dr. Mallis's ability to safely prescribe controlled substances, specifically opioids in light of his cognitive impairment.

17. As a guide in assessing the amount of opiate therapy a doctor may safely prescribe, Dr. Murray stated that the Morphine Equivalent Daily Dosage (MEDD) for a patient's daily opiate therapy, should not exceed 90 mg per day. Based on his review of the CURES report, Dr. Murray identified four patients to whom Dr. Mallis prescribed high doses of opioids, well in excess of the 90 MEDD threshold.

Dr. Murray noted that several medical societies advocate "extreme caution to be used when a patient is receiving over 90-100 mg of morphine or its MEDD. The board first published guidelines for prescribing opioids to chronic pain patients in 1994 and revised these guidelines in 2003, 2007, and 2014. He wrote, "Because of the potential for high-dose opioids to be lethal, it is imperative that the prescribing physician carefully assess the patient's medical condition and be capable of obtaining an appropriate history, exam and assessment while creating a treatment plan."

18. Given Dr. Ornish's opinions concerning Dr. Mallis's cognitive impairments, Dr. Murray stated he believes "it would be highly unlikely that [Dr. Mallis] would be able to formulate and establish a safe opioid treatment plan, especially given the high dosages of opioids prescribed."

## **LEGAL CONCLUSIONS**

### **Applicable Code Sections**

1. Government Code section 11529, subdivision (a), provides as follows:

The administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, imposing drug testing, continuing education, supervision of procedures, limitations on the authority to prescribe, furnish, administer, or dispense controlled substances, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. The failure to comply with an order issued pursuant to Section 820 of the Business and Professions Code may constitute grounds to issue an interim suspension order under this section.

2. Government Code section 11529, subdivision (e), provides that the administrative law judge shall grant the interim order where, in the exercise of discretion, the judge concludes that: "(1) There is a reasonable probability that the petitioner will prevail in the underlying action," and "(2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order."

3. Business and Professions Code section 822 authorizes the board to revoke or suspend respondent's Physician's and Surgeon's certificate, or place him on probation, if it determines that respondent's "ability to practice his . . . profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency. . ." Subdivision (d) permits the board to take "such other action in relation to the licentiate as the licensing agency in its discretion deems proper."

### **Burden and Standard of Proof**

4. Petitioner must prove the facts necessary to establish the conditions under Government Code section 11529 by a preponderance of the evidence.

### **Evaluation and Disposition**

5. Based on Dr. Ornish's declaration and the other evidence of record, a preponderance of the evidence established that petitioner has a reasonable probability of prevailing in an underlying action in this matter and the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

Dr. Ornish found that respondent likely suffers from a significant cognitive impairment, Alzheimer's disease, that impairs his ability to safely practice medicine due to severe short and long-term memory deficits. Such deficits significantly impact his critical thinking skills and these skills are necessary for the safe prescription of controlled substances, including specifically opioid pain medications. Due to his cognitive impairments, the specific concerns expressed by both Dr. Ornish and Dr. Murray concerning his ability to safely prescribe opioids are well-founded, and Dr. Mallis is presently unable to safely prescribe opioid pain medications.

## ORDER

Physician's and Surgeon's Certificate No. A 23608 issued to respondent Seymour Mallis, M.D., is suspended and, pending further order or decision, respondent shall not practice medicine in the State of California.

During any period of interim suspension, starting with receipt of this Order, respondent shall surrender to the Board or its agent, for safekeeping pending a final administrative order of the board in this matter, all indicia of his licensure as a physician under Business and Professions Code section 119, including his wall certificate and his wallet card, all prescription forms, all prescription drugs not legally prescribed to respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration permits.

DATE: December 28, 2020

Abraham M. Levy  
Abraham M. Levy (Dec 28, 2020 16:56 PST)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings